

## Remarks

In the present response, claims 3 and 15 are canceled. Claims 1-2, 4-14, and 16-29 are presented for examination.

### **Claim Rejections: 35 USC § 103(a)**

Claims 1-8, 10-20, 22, and 23 are rejected under 35 USC § 103(a) as being unpatentable over US publication number 2001/0053688 (Rignell) in view of USPN 6,549,770 (Marran) and WO 98/38823 (Lawrence) and US publication number 2002/0116665 (Pickover). Claims 3 and 5 are rejected under 35 USC § 103(a) as being unpatentable over US publication number 2001/0053688 (Rignell) in view of USPN 6,549,770 (Marran) and WO 98/38823 (Lawrence) and US publication number 2002/0116665 (Pickover) and US publication number 2002/0198976 (Davenport). Claims 6 and 18 are rejected under 35 USC § 103(a) as being unpatentable over US publication number 2001/0053688 (Rignell) in view of USPN 6,549,770 (Marran) and WO 98/38823 (Lawrence) and US publication number 2002/0116665 (Pickover) and US 6,895,387 (Roberts). Claims 7 and 17 are rejected under 35 USC § 103(a) as being unpatentable over US publication number 2001/0053688 (Rignell) in view of USPN 6,549,770 (Marran) and WO 98/38823 (Lawrence) and US publication number 2002/0116665 (Pickover) and US publication number 2003/0005108 (Bartley). Claim 9 is rejected under 35 USC § 103(a) as being unpatentable over Rignell, Marran, Lawrence, Pickover, and US publication number 2003/0295753 (Homuth). Claim 21 is rejected under 35 USC § 103(a) as being unpatentable over Rignell, Marran, Lawrence, Pickover, and US publication number 2002/0178241 (Eriksson). Claims 27-28 are rejected under 35 USC § 103(a) as being unpatentable over Rignell, Marran, Lawrence, Pickover, and US publication number 2004/0215830 (Shenfield). Claims 24-26 are rejected under 35 USC § 103(a) as being unpatentable over Rignell in view of Lawrence and Pickover. Claim 29 is rejected under 35 USC § 103(a) as being unpatentable over Rignell, Lawrence, Pickover, and Shenfield. These rejections are traversed.

The claims recite one or more elements that are not taught or suggested in the art. These missing elements show that the differences between the combined teachings in the art and the recitations in the claims are great. As such, the pending claims are not a

predictable variation of the art to one of ordinary skill in the art. Some examples are provided below for the independent claims.

As one example, independent claim 1 recites allowing hardware vendors and the software application developers to query the database and obtain statistics on a number of mobile devices with a particular installed software. As another example, independent claim 14 recites that the hardware vendors and software application developers query the database to obtain statistics on a number of the mobile devices having a particular installed software. As yet another example, independent claim 24 recites a mobile device wherein the hardware vendors and the software application developers query the device profile data to obtain statistics on particular installed software. The art of record does not teach or suggest these elements.

The amendments to claims 1 and 14 are taken from previous dependent claims 3 and 15. Since the examiner argues that the elements in previous dependent claims 3 and 15 are taught or suggested in Davenport, discussion is directed to the teachings and suggestions in Davenport.

As discussed in paragraph [0011] of Davenport, an application executes on a computer to collect data about performance parameters, such as processor speed of the computer. The data is stored on the computer and then is transmitted (in the form of a session file) to a server for further processing (see Davenport at paragraph [0012]). The server processes the data and generates a summary which is transmitted to a data warehouse server for analysis and reporting in an on-line analytic processing (OLAP) environment (see Davenport at paragraph [0013]). Davenport further explains how the processed data is used: “In this way, a report 216 can be generated using the data as organized in the data warehouse server 214 and a report application, such as Microsoft Excel, to view the data in a desired format” (see Davenport at paragraph [0108]).

Thus, Davenport teaches that the data is provided in a report for viewing. This teaching is quite different than the elements in the claims. For example, claim 1 recites that the hardware vendors and the software application developers query the database. By contrast, the manufacturer Davenport does not “query” the database, but is provided with a report for viewing. By way of further example, claim 1 recites that the hardware vendors and the software application developers obtain “statistics on a number of mobile

devices with a particular installed software.” Nowhere does Davenport teach that the manufacturers obtain this type of information. Davenport teaches that the manufacturers obtain “information such as the processor speed of the computer system, the amount of its random access memory of the speed of the computer’s Internet access” (see Davenport at paragraph [0011]). Davenport never suggests that the manufacturers obtain “statistics on a number of mobile devices with a particular installed software.”

The differences between the claims and the teachings in the art are great since the references fail to teach or suggest all of the claim elements. As such, the pending claims are not a predictable variation of the art to one of ordinary skill in the art.

For at least these reasons, the claims are allowable over the art of record.

#### Hindsight Construction (Picking and Choosing)

In order to reject claims 3 and 15, the Office Action combines **five different references** to allegedly obviate the claims. Applicants respectfully assert that the Examiner is using knowledge of Applicants’ invention and then performing hindsight reconstruction to show the various claim elements. In other words, the Office Action is picking and choosing teachings from numerous isolated references. On this subject, the case law is clear: One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988).

### **CONCLUSION**

In view of the above, Applicants believe that all pending claims are in condition for allowance. Allowance of these claims is respectfully requested.

Any inquiry regarding this Amendment and Response should be directed to Philip S. Lyren at Telephone No. 832-236-5529. In addition, all correspondence should continue to be directed to the following address:

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